

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**SEPTEMBER 13, 2001**

**IN RE:**

**DOCKET TO DETERMINE THE COMPLIANCE  
OF BELL SOUTH TELECOMMUNICATIONS,  
INC.'S OPERATIONS SUPPORT SYSTEMS  
WITH STATE AND FEDERAL REGULATIONS**

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**DOCKET NO.  
01-00362**

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**ORDER ESTABLISHING ISSUES AND PROCEDURAL SCHEDULE**

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This matter came before the Tennessee Regulatory Authority ("Authority" or "TRA") at a duly noticed Pre-Hearing Conference on September 6, 2001. Director H. Lynn Greer, Jr. presided over the Pre-Hearing Conference as the Pre-Hearing Officer. The Pre-Hearing Conference was convened for the purpose of determining the issues to be considered in this proceeding and establishing a procedural schedule.

**Background**

At a regularly scheduled Authority Conference held on February 21, 2001, the Authority convened TRA Docket No. 01-00362 to explore whether competing local exchange carriers ("CLECs") operating in Tennessee have nondiscriminatory access to BellSouth's Operations Support System ("OSS") as required by state and federal law. The stated purpose of Docket No. 01-00362 is "to determine whether existing data or test results derived from OSS testing in other states is reliable and applicable to Tennessee and, in those instances where reliance on such testing is inappropriate, to conduct

necessary testing.”<sup>1</sup> In establishing this docket, the Directors unanimously voted to engage an independent, third party consultant to advise the Authority on the reliability of existing data or test results and to conduct any required testing. The Authority appointed Director H. Lynn Greer, Jr. to serve as the Pre-Hearing Officer.

On May 3, 2001, the Pre-Hearing Officer issued his First Report and Recommendation in TRA Docket No. 01-00362, setting forth a procedure for determining whether BellSouth’s Tennessee systems and processes operate sufficiently to provide wholesale services and elements to CLECs without impeding competition. The Pre-Hearing Officer proposed to bifurcate the proceedings into two separate phases. As to Phase I, the Pre-Hearing Officer recommended that the Authority direct the selected consultant to prepare and submit a Phase I report, within an established time frame, consisting of the following elements: (1) identification of the systems or processes used by BellSouth’s Tennessee operations for providing services and network elements to competitors; (2) an audit of BellSouth’s Tennessee performance data; and (3) recommendations regarding performance and system testing necessary for the Authority to ascertain whether BellSouth is providing network services and elements to CLECs in Tennessee without impeding competition. The Pre-Hearing Officer also recommended that, upon completion of the consultant’s Phase I report, the Authority convene a hearing for the purpose of receiving testimony and other evidence from the consultant and interested parties. The Pre-Hearing Officer proposed that, after the conclusion of the

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<sup>1</sup> *In re Docket to Determine the Compliance of BellSouth Telecommunications, Inc.’s Operations Support Systems with State and Federal Regulations*, TRA Docket No. 01-00362 (Order Approving First Report and Recommendation of the Pre-Hearing Officer), p. 2-3 (Released July 27, 2001).

hearing, the Authority render a decision on the consultant's recommendation and the necessity for actual testing of BellSouth's OSS in Tennessee. Under the Pre-Hearing Officer's proposal, any necessary testing would be conducted during Phase II.

At a regularly scheduled Authority Conference on May 15, 2001, the Pre-Hearing Officer recommended that the Authority direct the selected independent, third party consultant to relate the testing in other states to the Tennessee systems and agreed that such a review would "verify the appropriateness, the independence and the accuracy of the testing so done."<sup>2</sup> The Pre-Hearing Officer then made a motion, contingent upon the Authority's approval of the First Report and Recommendation, that the Executive Secretary be authorized to select and retain a qualified consultant to prepare the Phase I report proposed in the First Report and Recommendation.

During the May 15<sup>th</sup> Authority Conference, the Directors voted unanimously to approve the First Report and Recommendation. In addition, the Directors voted unanimously to authorize the Executive Secretary to proceed expeditiously to select and retain a qualified consultant, subject to approval by the Authority.

After consultation with Authority staff, the Executive Secretary determined that only one consultant, KPMG Peat Marwick ("KPMG"), possessed the experience and expertise with BellSouth's OSS necessary to fulfill the TRA's stated requisites. After several meetings with and correspondence from representatives from KPMG, however, it became clear that KPMG was unwilling to provide a report which would verify the appropriateness, the independence and the accuracy of the OSS testing performed in

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<sup>2</sup> *In re Docket to Determine the Compliance of BellSouth Telecommunications, Inc.'s Operations Support Systems with State and Federal Regulations*, TRA Docket No. 01-00362 (Transcript from May 15, 2001 Authority Conference), p. 31-32.

Florida and Georgia.

On August 15, 2001, the Executive Secretary filed a Status Report informing the Directors of his inability to retain an independent, third party consultant that would execute a contract for the services requested by the Authority. At the Executive Secretary's request, this docket was placed on the August 21, 2001 Authority Conference agenda.

At the August 21<sup>st</sup> Authority Conference, the Directors deliberated upon the Executive Secretary's Status Report. A majority of the Directors determined not to engage a third party consultant, but to move forward with the Authority's own contested case. The same majority voted to amend those portions of the Pre-Hearing Officer's First Report and Recommendation which proposed to engage a third party consultant to participate in Phase I of this proceeding.<sup>3</sup>

On August 23, 2001, the Executive Secretary issued a Notice of Hearing informing the parties that a Pre-Hearing Conference was scheduled for September 6, 2001.

On September 5, 2001, the following documents were filed: (1) Motion Of AT&T Communications Of The South Central States, Inc. And TCG MidSouth, Inc. For Reconsideration And Clarification Of The Method The Authority Has Decided Upon To Determine Whether BellSouth's Operational Support Systems Comply With State And Federal Law; (2) Motion Of AT&T Communications Of the South Central States, Inc., TCG MidSouth, Inc. and Southeastern Competitive Carriers Association for Discovery; (3) Motion Of AT&T Communications Of the South Central States, Inc. And TCG

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<sup>3</sup> Director Malone did not vote with the majority. See Transcript of August 21, 2001 Authority Conference, p. 31, 48.

MidSouth, Inc. For Michael Hopkins To Appear *Pro Hac Vice*.

**The September 6, 2001 Pre-Hearing Conference**

The parties in attendance at the September 6, 2001 Pre-Hearing Conference included:

BellSouth Telecommunications, Inc. ("BellSouth") – **Guy M. Hicks, Esq.**, 333 Commerce Street, 22<sup>nd</sup> Floor, Nashville, TN 37201-3300 and **Fred J. McCallum, Esq.**, 675 West Peach Street, Suite 4300, Atlanta, GA 30375;

AT&T Communications of the South Central States, Inc. ("AT&T") – **Jack W. Robinson, Jr., Esq.**, Gullett, Sanford, Robinson & Martin, 230 Fourth Avenue, North, 3<sup>rd</sup> Floor, Nashville, TN, 37219 and **Michael A. Hopkins, Esq.**, McKenna & Cuneo, L.L.P., 1900 K Street, Washington, D.C. 20006.

Southeastern Competitive Carriers Association ("SECCA") – **Henry Walker, Esq.**, Boulton, Cummings, Conners & Berry, 414 Union Street, No. 1600, P.O. Box 198062, Nashville, TN 37219-8062.

MCImetro Access Transmission Services, LLC ("MCImetro") and Brooks Fiber Communications of Tennessee, Inc. ("Brooks Fiber") – **Dulaney L. O’Roark, Esq.**, 6 Concourse Parkway, Atlanta, GA 30328

**1. Pending Motions**

During the Pre-Hearing Conference, the Pre-Hearing Officer inquired whether, aside from the motions filed on September 5, 2001, there were any outstanding motions requiring resolution. None of the parties responded in the affirmative.

The Pre-Hearing Officer then stated that because the purpose of the Pre-Hearing Conference was to establish the issues and a procedural schedule, the two issues raised in the Motion for Discovery filed by AT&T, TCG and SECCA, these issues presumably would be resolved in the Pre-Hearing Conference. The Pre-Hearing Officer requested AT&T, TCG and SECCA to inform him if issues raised in their Motion for Discovery remained unresolved at the conclusion of the Pre-Hearing Conference.

At the conclusion of the Pre-Hearing Conference, the Pre-Hearing Officer

inquired whether the movants were satisfied that the issues raised in their motions had been addressed with the exception of the Motion for Reconsideration. Counsel for AT&T inquired whether he could inform the Pre-Hearing Officer of his opinion on that issue the next day.

The Pre-Hearing Officer observes that the movants have not stated whether they are satisfied that the matters raised in their Motion for Discovery, establishing a procedural schedule and the issues to be considered in this proceeding, have been resolved. This Order establishes a procedural schedule and a list of issues which are substantially similar to those proposed in the Motion, thereby rendering the Motion moot.

The Motion for Michael A. Hopkins to Appear *Pro Hac Vice* filed by AT&T and TCG is unopposed. It complies with Tenn. Comp. R. & Reg. 1220-1-2-.04(7). Accordingly, the Motion for Michael A. Hopkins to Appear *Pro Hac Vice* is granted.

## **2. Procedural Schedule**

The Pre-Hearing Officer stated that his immediate goal for the Pre-Hearing Conference was to assure that the Authority was provided with information necessary for the resolution of the docket concurrently proceeding under 47 U.S.C. § 271, to provide appropriate due process and to allow sufficient time for necessary discovery. The Pre-Hearing Officer proposed a procedural schedule and requested comments from the parties thereon. After further consideration, the following revised schedule is established:

- Discovery Requests shall be filed with the Authority and served on all parties no later than **3:00 p.m. Monday, September 17, 2001**. Discovery Requests shall conform to Tenn. Comp. R. & Reg. 1220-1-2-.11(5) and be served by hand-delivery, facsimile or e-mail on the date of filing.
- Objections to Discovery Requests shall be filed with the Authority and service on all parties no later than **3:00 p.m. Monday, September 24, 2001**. Objections to Discovery Requests shall conform to Tenn. Comp. R. & Reg.

1220-1-2-.11(5) and be served by hand-delivery, facsimile or e-mail on the date of filing.

- Responses to Discovery Objections and a List of Persons to be Deposed shall be filed with the Authority and served on all parties no later than **3:00 p.m., Thursday, September 27, 2001**. Responses to Objections to Discovery Requests shall be served by hand-delivery, facsimile or e-mail on the date of filing.
- Responses to Discovery Requests shall be filed with the Authority and served on all parties no later than **3:00 p.m., Friday, October 12, 2001**. Responses to Discovery Requests shall be served by hand-delivery, facsimile or e-mail on the date of filing.
- Pre-filed Direct Testimony shall be filed with the Authority and served on all parties no later than **3:00 p.m., Monday, October 22, 2001**. Pre-filed Direct Testimony shall be served by hand-delivery, facsimile or e-mail on the date of filing.
- Depositions will be taken from **Monday, October 29 through Friday November 2, 2001**, unless the parties and the Authority agree otherwise;<sup>4</sup>
- Pre-filed Rebuttal Testimony shall be filed with the Authority and served on all parties no later than **3:00 p.m., Tuesday, November 20, 2001**. Pre-filed Rebuttal Testimony shall be served by hand-delivery, facsimile or e-mail on the date of filing.
- The Hearing is set for **9:00 a.m., Monday, December 3 through Friday, December 7, 2001**.

### **3. Parameters of Discovery**

During the Pre-Hearing Conference, the Pre-Hearing Officer informed the parties that this docket will proceed in two phases. Phase I will address the issue of the regionality of BellSouth's OSS. The Phase I Hearing is scheduled for December 3 through 7, 2001 and will be limited solely to the regionality issue. Phase II will address (1) whether measurable "commercial usage" exists that will allow the Authority to

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<sup>4</sup> The Pre-Hearing Officer determined that Authority Staff would be notified of and attend all depositions and be permitted to question the deponents.

determine if BellSouth is providing nondiscriminatory access to it OSS in Tennessee; (2) the degree of reliance that may be placed on the OSS testing conducted or being conducted in Florida and Georgia; and (3) what, if any, OSS testing is needed for BellSouth's Tennessee operations. The Phase II Hearing on reliability and commercial usage will be held subsequent to the Hearing on Phase I after proper notice to the parties. The Pre-Hearing Officer did not rule out the possibility that additional issues or phases will be added in the future.

Discovery under the above stated Procedural Schedule shall encompass the regionality, reliability and commercial usage issues. After the Phase I Hearing, the Pre-Hearing Officer will consider additional discovery on a limited basis, upon the request of any party.

The Pre-Hearing Officer instructed the parties that discovery requests shall be precise and on issue and that frivolous, overly broad and general discovery objections will not be tolerated. He discouraged the parties from creating unnecessary delays in these proceedings.

The Pre-Hearing Officer advised the parties that further testing is a possibility notwithstanding the discussions or determinations that occurred during the Pre-Hearing Conference. The Pre-Hearing Officer stated that Directors may order complete testing, partial testing or no testing at all. He further stated that the Directors can rule, not only on regionality, but also on the appropriateness of any testing done in another state which is presented during these proceedings.

#### **4. Issues for Consideration**

During the Pre-Hearing Conference, the Pre-Hearing Officer proposed a list of



issues to be used as a starting point in these proceedings. The Pre-Hearing Officer invited comments and temporarily recessed the Pre-Hearing Conference to allow the parties to review the issues. Considerable discussion on the proposed issues list ensued. During the discussion, BellSouth proposed that the issues list be expanded to include an inquiry into commercial usage. After considerable debate, the Pre-Hearing Officer determined that the issues list shall include an inquiry into the commercial usage of BellSouth's OSS.

During this proceeding, evidence on the following issues shall be deemed relevant and material:

**A. Phase I Issues – Regionality of BellSouth's OSS:**

1. Using the processes, sub-processes and activities identified by the Florida and Georgia Public Service Commissions for OSS testing as a starting point, identify all the OSS processes, systems and procedures used by BellSouth to provide wholesale elements and services in Tennessee.
2. For the inventory of processes, systems and procedures identified for BellSouth's Tennessee operations in Issue 1, compare such inventory with those processes, systems, and procedures that support BellSouth's wholesale operations in Georgia and Florida. Identify those Tennessee processes, systems and procedures that:
  - a. Are the same, physically and functionally, as those used to support BellSouth's Florida operations.
  - b. Differ from those used to support BellSouth's Florida operations. Explain in detail any differences.
  - c. Are the same, physically and functionally, as those used to support BellSouth's Georgia operations.
  - d. Differ from those used to support BellSouth's Georgia operations. Explain in detail any differences.
  - e. Are significant to the development of competition in Tennessee?(Provide a matrix classifying each Tennessee process identified in Issue 1 into the categories identified above.)

3. For the Tennessee processes, systems and procedures that are the same as those used to support BellSouth's Florida operations, categorize each process, system or procedure as:
  - a. Tested or scheduled for testing in Florida as part of the master test plan approved by the Florida PSC, or;
  - b. Not included in the PSC-approved master test plan for testing in Florida.
4. For the Tennessee processes, systems and procedures that are the same as those used to support BellSouth's Georgia operations, categorize each process, system or procedure as:
  - a. Tested or scheduled for testing in Georgia as part of the master test plan approved by the Georgia PSC, or;
  - b. Not included in the approved master test plan for testing in Georgia.

**B. Phase II Issues – Reliance on OSS testing in Florida and Georgia and determination of the scope of OSS tests, if any, needed in Tennessee.**

1. For those processes, systems or procedures deemed by the Authority to be Tennessee specific, does measurable commercial usage, such as performance data ordered by the Authority, exist in sufficient volumes to allow the Authority to determine if the process, system or procedure is being provided in a nondiscriminatory manner?
2. For those Tennessee processes, systems or procedures identified by the Authority as the same as those used to support BellSouth's Georgia or Florida wholesale operations, does measurable commercial usage exist that will allow the Authority to determine if the process, system or procedure is being provided in a nondiscriminatory manner?
3. For those Tennessee processes, systems or procedures identified by the Authority as 1) the same as those used to support BellSouth's Georgia or Florida wholesale operations, and; 2) tested or scheduled for testing in either Georgia or Florida, indicate whether the Florida and/or Georgia testing of such process is still timely and relevant?
4. Identify the processes, systems, or procedures included in the Florida master test plan but not in the Georgia master test plan. Explain why such processes were not included in the Georgia test and whether or not testing of such process[es] would have been beneficial in arriving at a final decision on the adequacy

of BellSouth's OSS in that state assuming that OSS availability is required for the provision, by competitors, of both residential and business service as contemplated under 47 U.S.C. § 271(c)(1)(A) of the Telecommunications Act of 1996, Tenn. Code Ann. § 65-4-123 and other applicable state and federal statutes.

5. Identify the processes, systems, or procedures included in the Georgia master test plan but not in the Florida master test plan. Explain why such processes were not included in the Florida test and whether or not testing of such process[es] would have been beneficial in arriving at a final decision on the adequacy of BellSouth's OSS in that state assuming that OSS availability is required for the provision, by competitors, of both residential and business service as contemplated under 47 U.S.C. § 271(c)(1)(A) of the Telecommunications Act of 1996, Tenn. Code Ann. § 65-4-123 and other applicable state and federal statutes.
6. Identify the processes, systems, or procedures that should be included in a master test plan designed to evaluate the availability of OSS provisioning for both residential and business service as contemplated under 47 U.S.C. § 271(c)(1)(A) of the Telecommunications Act of 1996, Tenn. Code Ann. § 65-4-123 and other applicable state and federal statutes. but were not included in the Florida master test plan. Explain why such processes were not included in the Florida test and whether or not testing of such process[es] would be beneficial in arriving at a final decision on the adequacy of BellSouth's OSS in Florida.
7. Identify the process[es] for arriving at a final master test plan in both Florida and Georgia. Evaluate the appropriateness, independence and accuracy of such process[es].
8. Provide recommendations as to the scope of OSS tests, if any, needed in Tennessee and the reliance that can be placed on Florida and Georgia tests.

During the Pre-Hearing Conference, the parties asserted no objections regarding the inclusion of these issues in this proceeding.

## **5. Procedural Directives Related to the Hearing**

During the Pre-Hearing Conference, the Pre-Hearing Officer expressed his

expectation that the parties would present their cases in a logical order. He directed all parties seeking permission to present witnesses out-of-order to file written motions with the Authority seven (7) days prior to the Hearing. The Pre-Hearing Officer also directed the parties to file an agreed order listing all witnesses who will testify at the hearing and the order in which they will testify no later than seven (7) days prior to the Hearing. Prior to testifying, each witness shall state on the record which issue they are addressing. All testimony shall reference the relevant issue with specificity. Further, the testimony offered during each Phase of the proceeding shall relate only to issues relevant to that Phase. The Pre-Hearing Officer further requested that, where possible, the intervenors combine resources during the Hearing Schedule.

**6. Agreed Motion for Extension of Time**

On September 12, 2001, AT&T, TCG, MCI WorldCom, Inc.<sup>5</sup> and SECCA filed an Agreed Motion for Extension of Time requesting that the procedural schedule adopted at the Pre-Hearing Conference be modified to allow until September 17, 2001 to file discovery requests and until October 12, 2001 to respond to those requests. Inasmuch as the revised procedural schedule set forth herein provides the relief sought by AT&T, TCG, and SECCA, the Agreed Motion for Extension of Time is dismissed as moot.

**IT IS THEREFORE ORDERED THAT:**

1. The procedural schedule as set forth in this Order is hereby adopted.
2. The list of issues as set forth in this Order is hereby adopted.
3. The Motion for Discovery filed by AT&T Communications of the South Central States, TCG MidSouth and the Southeastern Cooperative Carriers Association is

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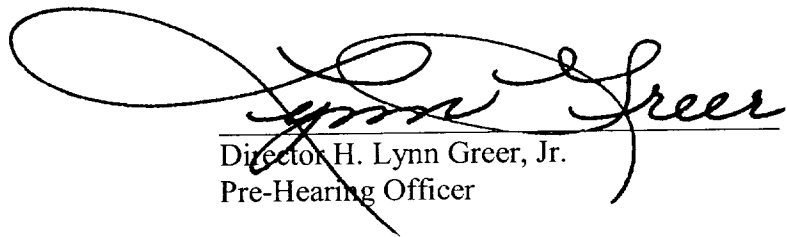
<sup>5</sup> Inasmuch as MCI WorldCom, Inc. has not intervened in this proceeding, it lacks standing to join in this Motion. See *Lowe v. Wright*, 40 Tenn. App. 525, 537, 292 S.W.2d 413, 419 (1956).

dismissed as moot.

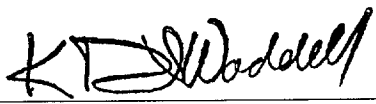
4. The Agreed Motion for Extension of Time filed by AT&T Communications of the South Central States, TCG MidSouth and the Southeastern Cooperative Carriers Association is dismissed as moot.

5. The Motion for Michael A. Hopkins to Appear *Pro Hac Vice* is granted.

6. Any party aggrieved by this Order may file a Petition for Reconsideration with the Pre-Hearing Officer within fifteen (15) days of the date of entry of this Order.



Director H. Lynn Greer, Jr.  
Pre-Hearing Officer



K. David Waddell, Executive Secretary